IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 62 OF 2002.

The Commissioner of Income Tax,
having office at Aayakar Bhavan,
Patto Plaza, Panaji, Goa. ... Appellant.

VERSUS

1. M/s. Tubki Cashew Works,
   Patnem, Canacona, Goa.

2. The Income Tax Appellate
   Tribunal, Panaji Bench,
   Aayakar Bhawan,
   Patto Plaza, Panaji, Goa. ... Respondents.

Mr. S.R. Rivonkar and Ms. A. Fadte, Advocates for the Appellant.

Mr. M.S. Usgaonkar, Senior Advocate with Mr. S.V. Kamat, Advocate for the Respondent No.1.

CORAM: P.V. KAKADE &
P.V. HARDAS, JJ.

DATE: 27TH NOVEMBER, 2002.

ORAL JUDGMENT: **(PER KAKADE, J.)**

This is an appeal under Section 260A of the Income Tax Act, 1961 preferred against the Judgment and Order passed by the Income Tax Appellate Tribunal, Panaji Bench, Panaji in IT Appeal No.146/PN/1993 for the Assessment Year 1990-91 whereby Order of CIT(A) was upheld and appellant's appeal came to be dismissed by Order dated 2nd January, 2002.

2. The facts giving rise to the dispute in a

nutshell are thus :-

Respondent no.1/Assessee is a dealer in cashews. The A.O. found that there was no opening stock as on 1.4.1989 and the Assessee had purchased 33453.35 kgs. of cashew seeds in the month of April, 1989 and had sold 56160 kgs. in that month meaning thereby that 22706.65 kgs. of cashew seeds had been sold without there being corresponding purchase to that extent. Likewise in the month of May, 1989, 28691.30 kgs. of cashew seeds were purchased and the sale was recorded at 61280.70 kgs. The cumulative difference at the end of May, 1989 was 55295.35 kgs. of cashew seeds for which no corresponding purchase was there. On this basis, the A.O. worked out the purchase rate at 16.5 per kg. and calculated the cost of 55295.35 kgs. at Rs.9,12,373/- which he added to the income of the Assessee as unexplained investment in purchases outside the books as discussed.

3. Aggrieved by such Order, Respondent No.1 preferred an appeal before CIT(A). The Respondent No.1/Assessee submitted that he had maintained rough books for purchase of cashews. The CIT(A) obtained a remand report from the A.O. which was submitted by A.O. after examination of the said rough books

maintained by the assessee for cashew purchases. It was the case of the assessee that it had made purchases of raw cashews through agents, sent to remote forest from where the agents directly make purchases and supply them to cashew factories. It was stated that advance payments are given to such agents which are fully reflected in the bank account of the assessee. It was submitted that the said advances and purchases were periodically reconciled whenever the agents come back to the headquarters. The explanation of the assessee was that cashews is a seasonal crop and all the purchases had to be made within the months of April, May and June. The purchases and sales both are accounted and are periodically reconciled. It was also demonstrated that total purchases and total sales for the whole year tallied. The record shows that it was brought to the notice of the CIT(A) that there was excess purchase of 17000 kgs which were sold to the assessee's processing unit for Rs.3,62,052/- which amount had been shown as sales and is accounted for in arriving at the income of the assessee. On consideration of the above contentions of the assessee and there being no serious objection raised by the A.O. the CIT(A) reached the conclusion that there was no suppression of purchases and hence the impugned addition was not justified. Being

aggrieved by the said order the appellant preferred an appeal before the Tribunal.

The Tribunal, on assessing the facts and circumstances on record, vis-a-vis the relevant legal aspects, came to the conclusion that there was no dispute that the assessee was engaged in business which is seasonal in nature and perusal of the assessment order revealed that no explanation whatsoever was sought from the assessee in respect of the alleged excess of sales of cashew seeds without there being corresponding purchases in the months of April and May, 1989. The assessee had furnished quantitative details for the months of April, May and June and demonstrated that the allegation of the A.O. was not correct. The quantities were tallied and the explanation offered by the assessee could not be adversely commented upon by the A.O. in the Remand Report submitted by him before the CIT(A). Therefore the Tribunal was of the opinion that on appreciation of the nature of assessee's business and the explanation offered by the assessee for the alleged discrepancy which could not be found fault with, the CIT(A) reached the right conclusion so that the impugned addition was unwarranted having regard to the facts and circumstances of the assessee's case and therefore

in the result the appeal came to be dismissed. Hence this Tax Appeal.

4. We have heard Mr. Rivonkar, the learned counsel for the appellant and Mr. M.S. Usgaonkar, the learned Senior Advocate for the Respondent No.1. It may be noted that earlier at the time of filing of the appeal the substantial questions of law sought to be raised on behalf of the appellant were found to be incorrect. The appellant sought and obtained amendment regarding the substantial questions of law and added the following substantial question of law :-

" Whether on the facts and circumstances of the case there was any relevant material before the ITAT to come to the conclusion that there was no suppression of purchases by the assessee ? "

5. As pointed out earlier, the A.O. was of the view that since the purchase and sale figures of the cashew nuts for the months of April, May and June did not tally and the accounts did not reflect the correct position, there was suppression by the Respondent No.1 in that regard. In support of this version, provisions of Section 44AA of the Income Tax Act was brought to our notice, which makes it

obligatory on the part of every person carrying on profession and business to keep and maintain such book of accounts and other documents as may enable the assessing officers to compute his total income in accordance with the provisions of this Act. It was urged on behalf of the appellant that since the rough books which were subsequently presented by the appellant were not in accordance with Section 44AA of the Income Tax Act, the Respondent No.1 was guilty of suppression of accounts and consequently the order of the Tribunal was illegal.

In this regard Mr. M.S. Usgaonkar, the learned Senior Counsel for the respondent No.1 brought to our notice the Rules framed under Section 44AA of the Income Tax Act. Rule 6F is regarding the books of account and other documents to be kept and maintained under Section 44AA(3) by persons carrying on certain professions. It is clear therefrom that the proviso to such Rule makes it clear that the respondent No.1 and his business are not covered by the said Rule which regulates the mode of maintaining accounts regarding certain professions.

6. Moreover, in this regard it must be pointed out that the provisions of Section 260A of

the Income Tax Act enabling filing of this appeal, contemplates involvement of substantial question of law. Therefore, it is needless to mention that the said provision is akin to the provisions of Section 100 of C.P.C. Therefore if we assess the merits of this appeal on the touchstone of the established principles of Civil Procedure Code pertaining to entertainment and adjudication of second appeal it is obvious that the appeal cannot be entertained if no substantial question of law is involved at all. As noted earlier, the so called substantial questions of law which are sought to be raised in this appeal are in respect of either factual aspects or pertaining to the allegations of the A.O. that certain purchases were suppressed by the assessee. In our considered view the members of the Appellate Tribunal have rightly dealt with this aspect and have come to the conclusion that the books of account as well as the contemporaneous record of the purchases and sales maintained by the assessee were sufficient compliance on their part to show that there was no suppression of any accounts or purchases in any manner whatsoever.

In this regard it would be worthwhile to take note of the ruling of the Supreme Court in the case of **Kondiba Dagadu Kadam v. Savitribai Sopan Gujar**

and others (1999) 3 S.C.C., 722, wherein the Apex Court has come to the conclusion that it is not within the domain of the High Court to investigate the ground on which the findings were arrived at by the last Court of fact, being the first appellate court. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.

7. In the present case before us the reasoning adopted and the findings recorded by both the lower Tribunals are found to be legal, proper and reasonable. The reasoning adopted by the Tribunal is also found to be based upon factual evidence and there is no perversity at all in the said conclusion drawn by the said authority.

In view of this situation, we have no hesitation to hold that the order passed by the Tribunal does not suffer from any irregularity or illegality and has to be maintained as it is legal and proper.

8. In the result, we have no reason to interfere therewith and consequently the appeal stands dismissed with no order as to costs.

P. V. KAKADE, J.

P. V. HARDAS, J.

sl.